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EXAMINER
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COUPE, ANITA YVONNE

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* ROBERT J. SUNDSTROM

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Appeal 2015-002150<sup>1</sup>  
Application 14/026,622<sup>2</sup>  
Technology Center 3600

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Before MICHAEL C. ASTORINO, NINA L. MEDLOCK, and  
CYNTHIA L. MURPHY, *Administrative Patent Judges*.

MEDLOCK, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1–22. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> Our decision references Appellant's Appeal Brief ("App. Br.," filed August 28, 2014) and Reply Brief ("Reply Br.," filed December 1, 2014), and the Examiner's Second Answer ("Ans.," mailed October 27, 2014) and Final Office Action ("Final Act.," mailed March 24, 2014).

<sup>2</sup> Appellant identifies Scenera Technologies, LLC as the real party in interest. App. Br. 3.

### CLAIMED INVENTION

Appellant's claimed invention "relates to coverage monitoring" and, more particularly, "to methods, systems, and computer program products for calendar-based coverage monitoring" (Spec. ¶ 2).

Claims 1, 13, 21, and 22 are the independent claims on appeal.

Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method for calendar-based coverage monitoring, the method comprising:

receiving a coverage rule defining at least one covering entity for performing an activity for a covered entity and at least one period of time during which the at least one covering entity is to perform the activity;

monitoring individual calendars for the at least one covering entity and detecting a change in at least one of the calendars;

determining whether the change causes at least one of the coverage rule to be violated and a threshold criteria to be met; and

in response to determining that the change causes the at least one of coverage rule to be violated and the threshold criteria to be met, automatically performing an action,

wherein at least one of the preceding actions is performed on at least one electronic hardware component.

### REJECTIONS

Claims 1–22 are rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.

Claims 1–22 are rejected under 35 U.S.C. § 102(b) as anticipated by Garcia et al. (US 2006/0074740 A1, pub. Apr. 6, 2006, hereinafter "Garcia").

## ANALYSIS

### *Non-Statutory Subject Matter*

Appellant argues claims 1–22 as a group (Reply Br. 4–9). We select claim 1 as representative. The remaining claims stand or fall with claim 1. *See* 37 C.F.R. §41.37(c)(1)(iv).

Under 35 U.S.C. § 101, an invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. The Supreme Court, however, has long interpreted § 101 to include an implicit exception: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *See, e.g., Alice Corp. Pty Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014).

The Supreme Court, in *Alice*, reiterated the two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 132 S. Ct. 1289, 1300 (2012), “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of these concepts.” *Alice Corp.*, 134 S. Ct. at 2355. The first step in that analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts,” *id.*, e.g., to an abstract idea. If the claims are not directed to a patent-ineligible concept, the inquiry ends. Otherwise, the inquiry proceeds to the second step where the elements of the claims are considered “individually and ‘as an ordered combination’” to determine whether there are additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” *Alice Corp.*, 134 S. Ct. at 2355 (quoting *Mayo*, 132 S. Ct. at 1297).

The Court acknowledged in *Mayo*, that “all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.” *Mayo*, 132 S. Ct. at 1293. We, therefore, look to whether the claims focus on a specific means or method that improves the relevant technology or are instead directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery.

*See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1336 (Fed. Cir. 2016).

Turning to the framework set forth in *Alice*, and as the first step of that analysis, we agree with the Examiner that claims 1–22 are directed to human resource management, i.e., a method of organizing human activity, and, therefore, to an abstract idea (Ans. 7). Claim 1, for example, recites a method comprising, *inter alia*, (1) receiving a coverage rule defining at least one covering entity for performing an activity and at least one period of time during which the activity is to be performed; (2) determining whether a change in at least one of the calendars for the at least one covering entity causes at least one of the coverage rule to be violated and a threshold criteria to be met; and (3) in response to determining that the change causes the at least one of the coverage rule to be violated and the threshold criteria to be met, automatically performing an action. Claim 1 recites that “at least one of the preceding actions is performed on at least one electronic hardware component.” Yet the steps, at best, involve no more than abstract concepts that could be performed in the human mind, or by a human using a pen and paper, without the need of any computer or other machine. “A method that can be performed by human thought alone is merely an abstract idea and is not patent-eligible under § 101.” *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1372–73 (Fed. Cir. 2011); *see also Gottschalk v.*

*Benson*, 409 U.S. 63, 67 (1972) (“[p]henomena of nature . . . , mental processes, and abstract intellectual concepts are not patentable, as they are the basic tools of scientific and technological work.”). Moreover, mental processes remain unpatentable even when automated to reduce the burden on the user of what once could have been done with pen and paper.

*CyberSource*, 654 F.3d at 1375 (“That purely mental processes can be unpatentable, even when performed by a computer, was precisely the holding of the Supreme Court in *Gottschalk v. Benson*.”).

Referencing the Supreme Court decision in *Alice*, Appellant argues that although the *Alice* Court did not provide a definition of “abstract idea,” the Court’s statements in *Alice* “strongly suggests or implies [sic] that it intended to limit the concept of ‘abstract ideas’ to concepts which are fundamental and long prevalent, such as concepts which have been well-known and extensively used for hundreds of years – like the hedging of *Bilski* and the intermediated settlement of *Alice*” (Reply Br. 6–7). Pointing to the method steps recited in claim 1, Appellant, thus, maintains that the pending claims “**do not embody ‘abstract ideas’ as outlined by *Alice***” because these operations “neither embody nor are analogous to fundamental economic practices (e.g., intermediated settlement), methods of organizing human activities (e.g., steps to hedge risk), ‘an idea in itself’ (e.g., principle, an original cause, a motive), or a mathematic relationship/formula” (*id.* at 7). Yet Appellant does not explain why, and we fail to see why, claim 1, which involves coordinating and monitoring the individual calendars of covering entities, i.e., individuals available to provide coverage for an activity, cannot be properly characterized as being directed to a method of organizing human activity.

Moreover, Appellant cannot reasonably deny that the claimed method, as recited in claim 1, can be performed manually or mentally, without the use of a computer or any other machine. Indeed, it is telling that claim 1 only requires that “at least one of the preceding actions is performed on at least one electronic hardware component,” without any indication of which action is performed on the hardware component.

Turning to the second step of the *Alice* analysis, we are not persuaded of Examiner error by Appellant’s argument that “the elements of Applicants’ claims . . . recite ‘significantly more’ than the abstract idea of human resource management” (Reply Br. 7). Appellant notes that claim 1 recites

“monitoring individual calendars for the at least one covering entity and detecting a change in one of the calendars” and “receiving a coverage rule defining at least one covering entity for performing an activity for a covered entity and at least one period of time during which the at least one covering entity is to perform the activity,”

and Appellant ostensibly argues that these limitations add “significantly more” than the abstract idea of human resource management (*id.*). Yet, receiving a coverage rule that defines a covering entity for performing an activity, and monitoring individual calendars for the covering entity to ensure the entity’s continued availability to perform the activity are merely part of the abstract idea itself. The only claim element beyond the abstract idea of human resource management is the “at least one electronic hardware component” on which “at least one of the preceding actions is performed.” And, that element adds nothing that is not already present when the steps of the method are considered separately.

Finally, we are not persuaded by Appellant’s argument that the claims “embody ‘improvements to a technical field’” (*id.* at 8). The only portion of

the claimed method that could be considered “technological” is the use of generic computer hardware, i.e., the claimed “at least one electronic hardware component” on which “at least one of the preceding actions is performed,” which is not enough to confer subject matter eligibility. *See Alice Corp.*, 134 S. Ct. at 2358 (“[I]f a patent’s recitation of a computer amounts to a mere instruction to ‘implemen[t]’ an abstract idea ‘on . . . a computer,’ that addition cannot impart patent eligibility.”). To the extent that claim 1 represents an improvement in the abstract idea of human resource management, we are not persuaded that the improvement is to any technology as opposed to an improvement to a general business practice.

We are not persuaded for the reasons set forth above that the Examiner erred in rejecting claim 1 under 35 U.S.C. § 101. Therefore, we sustain the Examiner’s rejection of claim 1, and claims 2–22, which fall with claim 1.

#### *Anticipation*

Appellant argues independent claims 1, 13, 21, and 22 as a group (App. Br. 11–20). We select claim 1 as representative. The remaining claims stand or fall with claim 1. *See* 37 C.F.R. §41.37(c)(1)(iv).

We are not persuaded by Appellant’s argument that the Examiner erred in rejecting independent claim 1 under 35 U.S.C. § 102(b) because Garcia does not disclose “receiving a coverage rule defining at least one covering entity for performing an activity for a covered entity and at least one period of time during which the at least one covering entity is to perform the activity,” as recited in claim 1 (App. Br. 11–15). Instead, we agree with the Examiner that Garcia discloses rules regarding the level of care patients



need and the skill level of employees and, thus, discloses a coverage rule, as called for in claim 1 (Final Act. 3; *see also* Ans. 8).

Garcia is directed to a medical facility employee scheduling method; in accordance with the method, an acuity level is assigned to each facility in-patient, and is used by an employee scheduling program to calculate the number of employees that are required to provide care to the patients (Garcia, Abstract). A profile also is compiled for each employee specifying that person's patient care capability; the calculated number of employees and the employee profiles are then used to schedule employees during the work shifts at the medical facility (*id.*). Garcia discloses that the actual amount of time that each employee has worked and the amount of time the employee is scheduled to work in the future are used to project whether the employee will work overtime; if so, a supervisor is alerted to the projected overtime and may reschedule employees to avoid incurring overtime expenses (*id.*).

Appellant argues that Garcia's rules regarding the level of care patients need and the skill level of employees do not constitute "a coverage rule," as recited in claim 1, because the rule "at most only specifies the skills that are required for a particular job and activities that may have to be performed" and "does not specify at least one period of time during which the at least one covering entity is to perform the activity" (App. Br. 14). However, we agree with the Examiner that the Garcia scheduling program is used to provide coverage for at least one covered entity (i.e., a patient) by at least one covering entity (i.e., a hospital employee) during a shift, which is "at least one period of time during which the at least one covering entity is to

perform the activity” (Ans. 8 (citing Garcia ¶¶ 34–37; Fig. 3 (element 49); Fig. 6 (element 85))).

Appellant next argues that the rejection of claim 1 should be reversed because Garcia does not disclose “determining whether the change causes at least one of the coverage rule to be violated and a threshold criteria to be met” (App. Br. 15–19). Appellant’s argument is not persuasive because it is not responsive to the Examiner’s interpretation of Garcia, as set forth in the Answer.

Addressing Appellant’s arguments in the Answer, the Examiner observes that the “determining” step is drafted in the alternative; therefore, the change need only cause “*at least one*” of the coverage rule to be violated and the threshold criteria to be met (Ans. 8). The Examiner posits that the scheduling system in Garcia monitors both the previously created coverage schedule and employees’ actual work time (via identification badge swipes, i.e., employees swipe the identification badge upon entering and leaving the hospital) and reasons that if an employee badge swipe creates a new actual time record, e.g., an unscheduled work period which the employee performed, the scheduling system notes the schedule change, and checks if the increased hours cause the overtime threshold, i.e., the number of allowable overtime hours, to be met (*id.*). Appellant does not address this line of reasoning in either their Appeal Brief or in the Reply Brief.

We are not persuaded on the present record that the Examiner erred in rejecting claim 1 under 35 U.S.C. § 102(b). Therefore, we sustain the Examiner’s rejection of independent claim 1, and independent claims 13, 21, and 22, which fall with claim 1. We also sustain the Examiner’s rejection

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under 35 U.S.C. § 102(b) of dependent claims 2–12 and 14–20, which are not argued separately.

#### DECISION

The Examiner's rejection of claims 1–22 under 35 U.S.C. § 101 is affirmed.

The Examiner's rejection of claims 1–22 under 35 U.S.C. § 102(b) is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED